

# **Exhibit 102**

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4 IN RE: )  
5 )  
6 CUSTOMS AND TAX ADMINISTRATION OF )  
7 THE KINGDOM OF DENMARK )  
8 (SKATTEFORVALTNINGEN) TAX REFUND )  
SCHEME LITIGATION )  
9 )

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15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

16 EXAMINATION OF

17 MICHAEL BEN-JACOB

18 DATE: October 11, 2021

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23 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 representation of any of your former clients  
2 where you said, "No, you should not do this?"

3 MR. DEWEY: Objection.

4 A With respect to the U.S. advice  
5 that we were asked to render, I believe that  
6 there were strategies or thoughts as to how  
7 the ownership should be held or how payments  
8 should be made among the clients or their  
9 entities or their pension plans where the  
10 appropriate lawyers with that substantive  
11 area of expertise, typically on the pension  
12 side, advised the clients that they should  
13 not do whatever was at issue.

14 Q Did you ever provide any assurance  
15 to any of your former clients that it was  
16 appropriate for a plan to represent to  
17 Denmark that the plan was the beneficial  
18 owner of Danish shares or Danish dividends?

19 MR. DEWEY: Objection.

20 A Can you please explain your  
21 question?

22 Q You understood that the plans that  
23 were set up in this ex-dividend strategy were  
24 going to be making reclaim applications to  
25 Denmark.

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1                   Correct?

2                   A    Yes, I understood that.

3                   Q    Did you ever provide any assurance  
4                   to any of your former clients that those  
5                   plans could appropriately represent that they  
6                   were the beneficial owners of Danish shares  
7                   or Danish dividends?

8                   MR. DEWEY: Objection.

9                   A    My firm advised that for U.S. tax  
10                  and pension law purposes, the pension plans  
11                  that engaged in the trading were -- could  
12                  appropriately represent that they were the  
13                  owners of the shares, again, from a U.S. tax  
14                  and pension law perspective.

15                  Q    That the plans could appropriately  
16                  represent, for U.S. tax purposes, that they  
17                  were the beneficial owners of the shares.

18                  Is that correct?

19                  A    That's correct.

20                  Q    And to whom were the plans  
21                  representing, for U.S. tax purposes, that  
22                  they were the beneficial owners of the  
23                  shares?

24                  A    Well, for example, to the IRS and  
25                  to -- from a regulatory perspective, to the

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1 Q Outside of U.S. tax and U.S. -- you  
2 said "regulatory."

3 Is that U.S. regulatory?

4 A Yes, U.S. regulatory.

5 Q Did you provide any advice with  
6 respect to any of the ex-dividend strategy  
7 outside of the area of U.S. tax and U.S.  
8 regulatory?

9 MR. DEWEY: Objection. You,  
10 Mr. Ben-Jacob, or his firm?

11 Q You or your firm?

12 A Well, to the best of my  
13 recollection, there may be something that I'm  
14 missing. But I do recall that there were  
15 some German law advice that my firm's German  
16 office provided.

17 Q Anything else?

18 A I -- I don't recall anything else.

19 Q Do you believe that in connection  
20 with the ex-dividend strategy which you  
21 assisted your clients, do you believe that  
22 they told you everything that you needed to  
23 know about those transactions?

24 MR. DEWEY: Objection.

25 A This group of clients is a very

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1 sophisticated group of clients --  
2 accountants, lawyers, MBAs -- that I had a  
3 longstanding relationship with. I  
4 represented any number of them, you know,  
5 five or six or seven years by the time this  
6 transaction took place.

7 And I believed then, and I believe  
8 now that they told us all the relevant facts  
9 and information related to the trading. And  
10 I relied on them on the basis of that  
11 relationship, and their honesty and  
12 integrity, as evidenced through the five  
13 years or six years that I represented them,  
14 and their expertise -- their own expertise in  
15 U.S. tax and related matters.

16 Q So do you believe they told you  
17 everything that you needed to know about the  
18 transactions on which you were engaged to  
19 assist?

20 MR. DEWEY: Objection.

21 A We relied on them for the  
22 information surrounding the transactions, and  
23 I believe they told us everything that we  
24 needed to know.

25 Q Do you believe they withheld any

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1 information from you that you needed to know?

2 MR. DEWEY: Objection.

3 A I have no reason to think that they  
4 withheld any information.

5 Q When they asked you to assist them  
6 with the transaction, did they explain to you  
7 each step of the proposed transaction?

8 MR. DEWEY: Objection. In Denmark?

9 Bill, can we be a little bit more  
10 specific?

11 Q As a general matter -- if there are  
12 some exceptions, please let me know.

13 But as a general matter, this  
14 sophisticated group of clients, when they  
15 engaged you to assist with the transaction,  
16 did they explain to you specifically and in  
17 detail each step of the transaction?

18 MR. DEWEY: Objection.

19 A I recall conversations with some of  
20 the group of clients where they explained to  
21 me at a high level the general concepts  
22 underpinning the transaction.

23 Q Was there ever any occasion where  
24 you felt that your clients had failed to tell  
25 you any significant step or any insignificant

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1 Exhibit 4484?

2 MR. MAGUIRE: Mark 4484.

3 (Whereupon the above mentioned was  
4 marked for identification.)

5 Q Let me know when you've had a  
6 chance to review the document.

7 A (Witness reviewing.)

8 I've read the document.

9 Q Is that your signature on the third  
10 page?

11 A That is my signature, yes. It's  
12 the second page.

13 Is there a third page?

14 Q I'm sorry. Second page. You're  
15 right.

16 A Okay. Yes, that is my signature.

17 Q Did you assist in transactions  
18 involving Ezra Academy?

19 MR. DEWEY: Objection.

20 A My firm provided advice with  
21 related transactions involving our clients,  
22 or what you're calling former clients, in  
23 Ezra Academy.

24 Q And were you involved in providing  
25 those services?

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1 A I don't have a recollection of this  
2 e-mail, so I can't say what I understood at  
3 the time.

4 Q Well, separately from this e-mail,  
5 did you have an understanding that in 2014,  
6 your former clients wanted to set up plans to  
7 participate in Danish trading?

8 MR. DEWEY: Objection.

9 A (Witness reviewing.)

10 That was my general understanding.

11 Q And did you understand that  
12 Sanjay Shah and Solo had allocated a certain  
13 number of plans to your former client group?

14 MR. DEWEY: Objection. In Denmark,  
15 Bill?

16 Where are we?

17 MR. MAGUIRE: Yes.

18 A I was not familiar with the  
19 business arrangements between Sanjay Shah and  
20 the former clients except at a very high  
21 level. So I'm not familiar with the point  
22 that you've raised.

23 Q Did your former clients ever  
24 indicate to you that the reason they wanted  
25 to set up plans was because they wanted to

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1 use their allocation from Solo and  
2 Sanjay Shah?

3 MR. DEWEY: Objection.

4 A The business arrangements between  
5 my former clients and Sanjay Shah were  
6 negotiated directly between them, among them.  
7 I nor -- to the best of my knowledge, nor my  
8 firm was involved in those discussions.

9 Q Did you ever ask your former  
10 clients what were the business arrangements  
11 between them and Solo Capital?

12 A To the best of my recollection, the  
13 only aspect that I can recall of those  
14 business arrangements -- of those business  
15 arrangements had to do with a general  
16 allocation of the dividend reclaims as a  
17 matter of percentages between the former  
18 clients and Sanjay's group.

19 Q That was the general allocation of  
20 what, 66 percent to 34 percent?

21 A It was -- I don't recall  
22 specifically, but it was something like that.

23 MR. MAGUIRE: Tom, I think you  
24 wanted to take a break at this stage?  
25 So we don't we take -- how long do you

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1 is what you're asking.

2 Q You're saying you did not have that  
3 understanding?

4 A I would not have had that  
5 understanding, correct.

6 Q Can you turn, sir, to Exhibit 4494?

7 MR. MAGUIRE: Mark 4494.

8 (Whereupon the above mentioned was  
9 marked for Identification.)

10 A Yeah, I have it here. Again bear  
11 with me as I look through it.

12 (Witness reviewing.)

13 Q My only question, sir, about this  
14 e-mail is whether this is one on which you  
15 were copied from Adam LaRosa on or about  
16 May 11, 2013?

17 A (Witness reviewing.)

18 The top e-mail in the exchange is  
19 dated May 11, 2013. It's from Adam LaRosa,  
20 and in the CC, I confirm, it lists my e-mail  
21 address.

22 Q Now, you were involved in questions  
23 that arose concerning FBAR reporting by your  
24 former clients.

25 Correct?

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1 MR. DEWEY: Objection.

2 A Just to be clear, are you asking me  
3 that in relation to this document, or  
4 generally?

5 Q Generally?

6 A Generally, yes, that's correct.

7 Q And in connection with that, your  
8 former clients sent financial information to  
9 you and your firm?

10 MR. DEWEY: Objection.

11 A I believe that's correct.

12 Q Attached to this e-mail is an  
13 account for Mill River Capital Pension Plan.

14 Do you see that?

15 A I do.

16 Q And if you look at the first page,  
17 you'll see this is an account from  
18 Solo Capital?

19 A (Witness reviewing.)

20 The Solo Capital's logo appears at  
21 the top right of the page, yes.

22 Q And you'll see, in the middle of  
23 the page, there's an "Account Financial  
24 Summary?"

25 A Well, are you talking about the box

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1 right under the address?

2 MR. DEWEY: Want me to direct him,  
3 Bill?

4 Q Right under the address, there's a  
5 box of --

6 A Oh, there it is. Sorry. Yes, I  
7 see the words "Account Financial Summary."

8 Q Yeah. And then, just below that,  
9 on the left-hand side, you'll see "Open Cash  
10 Balance."

11 Do you see that?

12 A Yes.

13 Q And it shows a zero open cash  
14 balance in Euro kroner and Euro base?

15 A I see that, yes.

16 Q Just below that, you see the cash  
17 equity settlement.

18 Do you see that?

19 A I do.

20 Q And that provides a purchase price  
21 that's just over 849 million kroner?

22 A I don't know what the words "cash  
23 equity settlement" mean, so I can't speak to  
24 whether that figure speaks to a purchase  
25 price or something else.

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1 Q You have no understanding as to  
2 whether that amount is the purchase price of  
3 Danish equities.

4 Is that correct?

5 A I don't know what the words "cash  
6 equity settlement" mean. I know what the  
7 words "purchase price" means.

8 I don't know what the words "cash  
9 equity settlement" means.

10 Q If you look further down, about  
11 five or six lines below the cash equity  
12 settlement words, you'll see the words "stock  
13 loan cash original."

14 Do you see that?

15 A I do.

16 Q And you understood that the plans  
17 would be financing their purchases of equity  
18 by entering into stock lending agreements.

19 Is that correct?

20 MR. DEWEY: Objection.

21 A I understood that the plans were  
22 entering into stock lending agreements. I  
23 did not understand the function of those  
24 lending agreements in the overall  
25 transaction.

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1 Q You'll see that the amount of the  
2 stock loan cash original here is the exact  
3 same amount as the cash equity settlement.

4 Do you see that?

5 A Well, one is a negative number.  
6 The other is a positive number.

7 Q And the actual numbers themselves  
8 are identical?

9 A Yes, I do see that.

10 Q So did you understand that the  
11 plans were paying for Danish shares with cash  
12 they obtained from a stock lending agreement  
13 to cover the full amount of the stock  
14 purchase?

15 MR. DEWEY: Objection, asked and  
16 answered.

17 A I understood generally that there  
18 were financing purchases. I did not have an  
19 understanding at the time, or now, as to how  
20 that how those financing arrangements were  
21 made.

22 Q Did you understand that the plans  
23 were beginning their trading with zero cash  
24 balances?

25 A I don't recall one way or the

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1 other.

2 Q Now, you'll see at the bottom of  
3 the page or close to the bottom of the page,  
4 there's a reference to "cash movements?"

5 A Yes, I see that.

6 Q And you'll see that's zero?

7 A Yes, it says zero.

8 Q If you turn to the last page of the  
9 document, sir -- or actually, let me back up.  
10 Before we go to the last page, we can also  
11 look at the page ending in the Bates 594.

12 A I think I have the right page.

13 Q Do you see in the center, at the  
14 top, it says "Stock Loan Transaction  
15 Statement?"

16 A Yes.

17 Q And right below those words is the  
18 word "counterparty," and the counterparty in  
19 every case is Aquila (Cayman)?

20 A I may be on the wrong page. I  
21 don't see the words "counterparty."

22 THE WITNESS: Do you see it?

23 MR. DEWEY: Do you want me to  
24 direct him, Bill?

25 A Wait. I'm sorry. Here. It's in

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1 the columns right here.

2 I have it here, yes.

3 "Counterparty," yes.

4 Q Do you see Aquila (Cayman) is the  
5 stock loan counterparty?

6 A I do.

7 Q What did you know about  
8 Aquila (Cayman)?

9 A I had a general recollection that  
10 that was an entity somehow associated with  
11 Solo Capital.

12 Q And what was the -- where did you  
13 get the understanding?

14 A It's just a vague recollection that  
15 I have. I can't recall specifically.

16 Q You don't recall who told you what  
17 the relationship was with Solo Capital?

18 A I do not.

19 Q And do you understand what was the  
20 relationship? How were Solo and  
21 Aquila (Cayman) related?

22 A I do not recall.

23 Q Did Sanjay Shah control Aquila  
24 capital?

25 MR. DEWEY: Objection.

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1 A I do not recall one way or the  
2 other.

3 Q If you could turn to the last page  
4 of the document?

5 A I have it.

6 Q There's a table at the bottom?

7 A Yeah. I can't see it, but yes.

8 Q It's hard to read. Only thing I  
9 want you to focus on is the last line.

10 Do you see where it says "variation  
11 margin?"

12 A Yes, I see those words.

13 Q What is "variation margin?"

14 A I do not know.

15 Q Can you turn, sir, to Exhibit 4495?

16 MR. MAGUIRE: Mark 4495.

17 (Whereupon the above mentioned was  
18 marked for Identification.)

19 A Okay. I have it here.

20 Q Is this an e-mail that Adam LaRosa  
21 sent to you on or about June 4 of 2013?

22 A So bear with me as I go through the  
23 whole exhibit.

24 (Witness reviewing.)

25 I skimmed through this. What is

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1 your question?

2 Q So you received this from Adam  
3 LaRosa on or around June 4 of 2013?

4 A Well, I don't have any specific  
5 recollection of this e-mail exchange, but the  
6 e-mail indicates it was sent to me on that  
7 date.

8 Q And Mr. LaRosa says he's sending  
9 you "the actual cash balances for 2012."

10 Do you see that?

11 A I do.

12 Q So if we go to the first one of  
13 this page, you'll see it's an e-mail, again  
14 from Custody@Solo to Adam@Mill River Capital.

15 Do you see that?

16 A I do.

17 Q And it gives the Mill River cash  
18 balances for 2012.

19 Do you see that?

20 A I do.

21 Q And you'll see that the balances  
22 are all negative, except for two, which is  
23 the refund from Denmark.

24 Do you see that?

25 A I do.

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1 Q Now if you turn to the next page,  
2 you'll see a similar balance from Solo for  
3 Lion Advisory.

4 Right?

5 A (Witness reviewing.)

6 Well, I see an e-mail from  
7 Custody@Solo, May 23, 2013 at 1039. I'm not  
8 sure -- oh, Lion Advisory, there it is.

9 Yes, that's Adam LaRosa's e-mail  
10 address, yes.

11 Q And again, you'll see that each of  
12 the balances here is negative except for the  
13 refund money from Denmark.

14 Correct?

15 MR. DEWEY: Objection.

16 A That's what it seems to say, yes.

17 Q If we turn to the next page, we'll  
18 see the balance from Solo for California  
19 Catalogue Company.

20 Do you see that?

21 A Yes.

22 Q And again, you'll see all of the  
23 cash items are negative except for the refund  
24 from Denmark?

25 MR. DEWEY: Objection.

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1 A Yes, I see that.

2 Q And if we turn to the next page,  
3 you'll see the cash statement from Solo for  
4 the Delvian plan.

5 Right?

6 A Yes.

7 Q And all the cash balances again are  
8 negative except for the refund money from  
9 Denmark.

10 Right?

11 MR. DEWEY: Objection.

12 A Yes, I see that.

13 Q Did you ever see any positive cash  
14 balance for any plan other than the  
15 withholding tax refund from Denmark?

16 MR. DEWEY: Objection.

17 A (Witness reviewing.)

18 I don't recall one way or the  
19 other.

20 Q Sir, if you could turn to Exhibit  
21 4496?

22 MR. MAGUIRE: Mark 4496.

23 (Whereupon the above mentioned was  
24 marked for Identification.)

25 A I have it here.

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1                   This was a financial statement  
2                   prepared by what appears to be Ron Carlin, an  
3                   accounting firm. And I can't speak to why he  
4                   used any particular term of art.

5                   Q        Mr. Carlin was working for Mr. Van  
6                   Merkensteijn.

7                   Right?

8                   A        To the best of my understanding,  
9                   yes.

10                  Q        And Mr. Van Merkensteijn, you knew,  
11                  had directed that the books refer to reclaims  
12                  income as "trading income."

13                  Right?

14                  MR. DEWEY: Objection.

15                  A        I'm sorry. Are you saying that's  
16                  in the e-mail exchange somewhere? Did I miss  
17                  that? Are you -- you're saying.

18                  Q        Do you understand that?

19                  MR. DEWEY: Objection.

20                  A        Again, I don't have a recollection  
21                  and I can't say one way or the other.

22                  Q        You understood that Solo had a  
23                  services fee?

24                  A        I generally understood Solo as  
25                  being paid a fee, a services fee, yes.

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1 Q That was around 60 or 66 percent of  
2 the reclaim?

3 A That's my general recollection.

4 Q And here, the trading services fee  
5 is about 60 percent of the trading income?

6 A On approximate, looking at the  
7 numbers, it looks to be about that.

8 Q Do you understand that Mr. Van  
9 Merkensteijn had directed Mr. Carlin to style  
10 the Solo reclaims fee as a trading services  
11 fee?

12 MR. DEWEY: Objection, asked and  
13 answered.

14 A I can't say what conversations were  
15 had between Mr. Van Merkensteijn and  
16 Mr. Carlin. You'd have to ask them.

17 Q Did you understand from the e-mail  
18 communications that you had seen between  
19 Mr. Van Merkensteijn and his colleagues that  
20 he had asked them specifically to change the  
21 descriptions in the accounts and the books of  
22 the Azalea plan called "reclaim services fee"  
23 a "trading services fee?"

24 MR. DEWEY: Objection.

25 A I'm sorry. You had you said that's

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1 A I don't recall conversations  
2 surrounding this exchange one way or the  
3 other.

4 Q Sir, if you could turn to Exhibit  
5 4498?

6 MR. MAGUIRE: Mark 4498.

7 (Whereupon the above mentioned was  
8 marked for Identification.)

9 A Yes, I have it.

10 Q Is this an e-mail you received from  
11 Matthew Stein on or about October 12, 2012?

12 A (Witness reviewing.)

13 That is the heading of the e-mail,  
14 yes.

15 Q In it, Mr. Stein says, "Michael,  
16 please forward to Woody."

17 Do you have an understanding as to  
18 who "Woody" was?

19 A Yes. That's a nickname used for  
20 Arthur Woodard, one of the pension law  
21 partners at Kaye Scholer at the time.

22 Q And attached to the e-mail is a tax  
23 reclaim advisory services agreement.

24 Do you see that?

25 A (Witness reviewing.)

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1 Yes, I see that.

2 Q If you turn to Page 219500?

3 A I have that page here.

4 Q And you'll see a schedule?

5 A I do see a schedule.

6 Q And it gives a percentage split on  
7 a refund amount and the percentage of  
8 67.5 percent?

9 A That's what the document says, yes.

10 Q Do you understand that was the  
11 percentage of the reclaim that would be paid  
12 to Ganymede?

13 MR. DEWEY: Objection.

14 A Well, it's titled "Relevant  
15 Percentage" which appears to be a defined  
16 term in the document, and the document speaks  
17 for itself as to what it means.

18 Q Do you understand that was the  
19 amount that the plan would pay to Ganymede?

20 A Again, I don't have a specific  
21 recollection of this document, so I cannot  
22 say one way or the other what my thinking was  
23 at the time other than to say that the  
24 document speaks for itself as to what the  
25 definition of "relevant percentage" is.

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1 Q And is it your -- and is it your  
2 understanding today that under the plan's  
3 agreements with Ganymede, that pursuant to  
4 this agreement, the plan would pay  
5 67.5 percent to Ganymede?

6 MR. DEWEY: Objection, vague.

7 A I can't say today what this  
8 agreement entails. I would have to read it  
9 and fully absorb it and I probably wouldn't  
10 understand any of it in any event.

11 It's not in my area, as I mentioned  
12 before.

13 Q Did you read the tax reclaim  
14 advisory services agreement at the time?

15 A I don't recall one way or the  
16 other.

17 Q Was it your understanding that all  
18 of the plans entered into a tax reclaim  
19 advisory services agreement with Ganymede?

20 A I don't recall. I don't recall one  
21 way or the other.

22 Q Who is Ganymede?

23 A Again, I have a vague recollection  
24 that is an entity that had some association  
25 with Solo Capital and Sanjay Shah.

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1 A I don't recall.

2 Q Did Ganymede provide the services  
3 for any plans?

4 A So you just dropped out.

5 Can you repeat the question,  
6 please?

7 Q Did Ganymede provide any services  
8 to the plans?

9 A I don't recall one way or the  
10 other.

11 Q You'll see the "services" is  
12 defined as "tax reclaim advisory services?"

13 A I see those words on the page, yes.

14 Q What are they?

15 MR. DEWEY: Objection.

16 A I don't know.

17 Q What services did Solo provide to  
18 the plans?

19 A I have a general understanding that  
20 Solo advised as to the selection of  
21 securities to purchase, generally assisted or  
22 facilitated in obtaining financing, and  
23 executed the trades.

24 Q And how did the plans pay Solo for  
25 those services?

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1 A My general understanding was that  
2 there was a division of the profits from the  
3 trades, approximately two-thirds, one-third.

4 Q Two-thirds to Solo and one-third?

5 A To the plan, correct.

6 Q And did the plans then pay that  
7 two-thirds to Solo or did they pay that  
8 two-thirds to Ganymede?

9 MR. DEWEY: Objection.

10 A I don't know.

11 Q Did you ever discuss -- did anyone  
12 ever inform you that the payments for Solo's  
13 services would be made to Ganymede?

14 A Again, our firm and my own  
15 involvement was limited to the U.S. tax and  
16 pension law issues that the clients asked us  
17 to look into, and again, regulatory and some  
18 administrative matters, as I had mentioned  
19 before.

20 We were not involved with the  
21 negotiations with Solo. We were not involved  
22 in the flow of funds. We were not involved  
23 in the trading.

24 So I have no information with  
25 respect to the questions you're asking.

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1       okay?

2           A     Sure --

3                    MR. DEWEY:  Or you can just say  
4                        "you" when you mean Mr. Ben-Jacob or the  
5                        firm.

6           A     In this matter, actually, as is  
7                       most of the matters we're discussing, it was  
8                       other attorneys in my firm that did the  
9                       lion's share of the work and I've helped  
10                  coordinate.  And that is true of this  
11                  particular memo as well.

12           Q     If we turn to the second page,  
13                there's a Section B called "Trading and  
14                Related Operations."

15                   Do you see that?

16           A     Yes.

17           Q     That carries over to the top of the  
18                next page where the first full sentence says,  
19                "We understand that," and there's a couple of  
20                little Roman Numerals there.

21                   When you say, "we understand that,"  
22                what was the basis for that understanding?

23           A     Representations made to us, meaning  
24                to the firm, by the client or the client  
25                group.

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1 Q But was there any other basis for  
2 that statement?

3 A (Witness reviewing.)

4 Are you talking about the first  
5 numerette, or the second numerette, or both?

6 Q Both. Because I think we  
7 understand it has two numerettes there, so.

8 A So we understand that, one, Solo  
9 provided the entire structure of the trading  
10 strategy to the trustees. So I believe that  
11 was entirely from the clients. Number two,  
12 the trustees had -- I'm sorry.

13 Number two, the trustees had little  
14 or no ability to negotiate the financial  
15 terms of the arrangement, which were  
16 basically the same or more favorable to the  
17 Michelle plan as arrangements that existed  
18 between Solo or other providers which engaged  
19 in this trading strategy.

20 I vaguely recall that there were  
21 other providers. A name that occurs to me is  
22 Duet, if I have it right. I'm not getting  
23 the full correct name, but Duet.

24 And there were discussions with  
25 Duet as to them providing similar services

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1 that Solo provided and their fees were equal  
2 to or more than Solo's. So we did have some  
3 independent information about what other  
4 service providers were charging for similar  
5 services.

6 Q Anyone other than Duet?

7 A I can't recall one way or the  
8 other.

9 Q You don't recall any other provider  
10 other than Duet?

11 A Not that I can recall.

12 Q Do you recall what the fees were  
13 that -- the fee arrangements that Duet  
14 required?

15 A Yeah, I can't say for sure. My  
16 recollection is very vague, but I seem to  
17 think it was, on an order of magnitude, 70 or  
18 75 percent of the profits from the  
19 transactions.

20 Q Then, with respect to the first  
21 Roman numerette where Solo provided the  
22 entire structure of the trading transaction,  
23 what did that mean?

24 MR. DEWEY: Objection.

25 A I can't say specifically what the

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1 phrase "entire structure" refers to here.

2 Q Did you understand that Solo  
3 recommended each step in the transactions?

4 A That was my -- when you say "each  
5 step," can you elaborate a little bit more  
6 what you mean?

7 Q Solo recommended all the purchases?

8 A My understanding was that Solo  
9 provided a list of, you know, suggested  
10 purchases, and that the clients -- or I  
11 should say the pensions then selected which  
12 they wanted to pursue.

13 Q And solo recommended all of the  
14 stock loans?

15 A Again, it was my general  
16 understanding that Solo facilitated and made  
17 introductions to financial and other lending  
18 institutions.

19 Q Solo recommended all the hedge  
20 transactions?

21 MR. DEWEY: Objection.

22 A That, I don't recall one way or the  
23 other.

24 Q Solo recommended the specific  
25 Danish security that the plans would buy?

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1 MR. DEWEY: Objection.

2 A I don't know one way or the other.

3 Q Did you ever do any diligence on  
4 Solo Capital?

5 A Can you elaborate by what you mean  
6 by "diligence?"

7 Q Any due diligence?

8 A Well, "due diligence" is a pretty  
9 vague term in my practice.

10 Can you tell me a bit more by --  
11 what you mean?

12 Q Any investigation, research of any  
13 kind, to see whether -- what Solo was, what  
14 it was capable of doing, what its financial  
15 strength was, what its credit ratings were,  
16 what its financial statement said?

17 Anything that -- along those lines?

18 A So I do generally recall having  
19 conversations along those lines with the  
20 clients. And they -- again, as we've  
21 mentioned before, sophisticated business  
22 people, accountants and lawyers indicated  
23 they were doing their own due diligence.

24 I understood that they went to  
25 London, met with Solo representatives. I

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1 don't know with whom they met. Stayed there  
2 for a number of days.

3 I understood -- I have a vague  
4 recollection that they had some sort of  
5 report commissioned. I can't remember the  
6 nature of the report, but some kind of --  
7 maybe it was a -- some business report or a  
8 certain business investigator.

9 I can't remember the details, but  
10 they had a third party investigate the bona  
11 fides of Solo and Mr. Shah. And so we relied  
12 on our clients investigation and due  
13 diligence.

14 Q So you, yourself, or your firm did  
15 not do any due diligence of Solo Capital?

16 A To the best of my knowledge, no.

17 Q Did your client group ever share  
18 findings from their due diligence  
19 investigation?

20 MR. DEWEY: Objection.

21 A Yes, I have a general recollection  
22 they certainly reported orally to me and  
23 perhaps to others in my firm, I don't know.  
24 But certainly we had conversations to the  
25 effect that, you know, Mr. Shah appeared to

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1 be, you know, a reputable businessperson,  
2 operating a licensed and properly regulated  
3 financial institution out of the U.K., had a  
4 pedigree of having worked with or been an  
5 executive with major -- other major financial  
6 institutions.

7           And I believe, as I said, there was  
8 some report that I vaguely remember them  
9 obtaining that I may have seen, but I can't  
10 recall if they gave me a copy, but that  
11 ultimately concluded that Mr. Shah and  
12 Solo Capital were a bona fide and reputable  
13 financial institution.

14           Q    Did they ever tell you what Solo  
15 Capital's ratings were?

16           A    I don't recall specific  
17 conversations one way or the other about  
18 credit rating.

19           Q    Did they ever provide you with  
20 Solo's financial statements?

21           A    I don't recall one way or the other  
22 receiving financial statements of Solo.

23           Q    Did they ever tell you what the  
24 financial wherewithal or strength of Solo  
25 Capital was?

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1                   As I sit here now reviewing the  
2 memo, I don't -- I can't say I understand it  
3 necessarily the same way. "Simultaneously"  
4 refers back to the prior paragraph that lists  
5 ten things that occurred.

6                   I don't know as I sit here now to  
7 which one or all of those things the word  
8 "simultaneously" refers to.

9                   Q     Let's leave aside this memo.

10                  Did you have an understanding that  
11 the plans bought the shares with money that  
12 they got from a securities lending  
13 arrangement?

14                  A     I can't recall one way or the other  
15 the details of the financing the plans  
16 arranged.

17                  Q     Did anyone tell you that in doing  
18 these transactions, the plans would be  
19 financing 100 percent of the purchase price?

20                  A     I do generally recall having  
21 conversations where it was explained that the  
22 plans would be financing all of the purchase  
23 price.

24                  Q     So you understood that the plans  
25 themselves would not need to have any money

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1 in order to buy the Danish shares?

2 MR. DEWEY: Objection.

3 A I understood, generally, at the  
4 time that the plans would be able to finance  
5 their purchase of the Danish shares.

6 Q 100 percent?

7 A That was my general understanding,  
8 yes.

9 Q So they would not need any of their  
10 own cash in order to pay for any of the  
11 Danish shares?

12 A That was my general understanding.

13 Q If we look at the next paragraph,  
14 it starts, "As noted, while the decisions as  
15 to which securities -- while the decisions as  
16 to which securities to purchase are solely  
17 within the purview of the Michelle plan  
18 trustees, they did take into account the  
19 recommendations of Solo."

20 Do you see that?

21 A I do.

22 Q What are the recommendations of  
23 Solo that are referred to there?

24 A I believe this refers to what I  
25 mentioned earlier, that Solo would, through

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1 there's a paragraph that starts, "Under the  
2 custodial agreement with Solo?"

3 A Yes, I see that paragraph.

4 Q It says, "The Michelle plan pays  
5 fees to Solo as per the schedule attached to  
6 the custodial agreement."

7 How did the -- let me take that  
8 back. Go to the next sentence.

9 It says, "The documents for the  
10 transaction indicate that of the gross amount  
11 payable to the Michelle plan, the Michelle  
12 plan retained approximately 34 percent and  
13 the remaining 66 percent was paid to Solo."

14 Was that consistent with your  
15 understanding?

16 A That was generally my  
17 understanding, yes.

18 Q And did any documents provide that  
19 payments would be made to Ganymede?

20 MR. DEWEY: Objection.

21 A I don't recall one way or the  
22 other.

23 Q What documents provided that  
24 payments would be made to Solo?

25 A I don't recall what documentation

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1 was put into place one way or the other with  
2 respect to payments to Solo.

3 Q Are you aware of any signed  
4 agreement that provided that payments would  
5 be made to Solo?

6 A I don't recall one way or the other  
7 what documentation was put into place with  
8 respect to payments to Solo.

9 Q Why did Solo simply recommend the  
10 trades? Why did the plans not simply appoint  
11 Solo as the investment manager?

12 MR. DEWEY: Objection.

13 A I have a general and somewhat vague  
14 recollection that there was a U.S. side  
15 securities law issue that other attorneys in  
16 my firm who were assisting with the matter  
17 pinpointed, and recommended instead that the  
18 ultimate decision for trading be placed in  
19 the hands of the pension plan trustees and  
20 not with Solo.

21 Q Now, when you say, "the ultimate  
22 decision," do you mean the decision as to  
23 whether or not the plan would participate in  
24 the transaction that Solo was recommending?

25 A I believe what I meant was the -- I

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1           A    I don't recall the specific nature  
2        of the concern that they raised, only that  
3        there was a concern, and that the way to  
4        avoid the concern and be fully compliant from  
5        a U.S. regulatory standpoint was to proceed  
6        as we've described.

7           Q    At the bottom of the page there's a  
8        paragraph that says, "While the documents  
9        provide that the 66 percent to Solo is a  
10       quote, fee, unquote, to Solo, the  
11       understanding of the parties at the time the  
12       transaction was entered into was that Solo  
13       and the Michelle plan were, instead,  
14       effectively engaged in a partnership under  
15       which the profits would be shared between  
16       them under the above profit allocation, with  
17       Solo being responsible for all of the  
18       partnership's expenses."

19           Do you see that?

20           A    I do.

21           Q    Where that refers to the  
22        "understanding of the parties" --

23           A    Yes.

24           Q    -- who is that referring to?

25           A    (Witness reviewing.)

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1 I believe the paragraph says that  
2 refers to Solo and the Michelle plan.

3 Q And did you understand that was  
4 fundamentally the business deal among your  
5 client group and Solo, which was that there  
6 would be a profit split with Solo of  
7 approximately two-thirds at one-thirds  
8 between their plans and Solo Capital?

9 MR. DEWEY: Objection.

10 A That was my general understanding.

11 Q And where you did get that  
12 understanding from? Who gave you that  
13 understanding?

14 A To the best of my recollection,  
15 that was based on conversations with the  
16 client group.

17 Q Did there come a time when the  
18 profit split changed from about 66 percent,  
19 34 percent, to a different split of  
20 75 percent, 25 percent?

21 A I can't recall one way or the  
22 other.

23 Q If we turn to the next page, 6,  
24 this is a discussion of transactions with  
25 qualified persons?

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1 A With anyone.

2 Q Do you recall, sir, that your  
3 former clients wanted your help in setting up  
4 a number of partnerships, some 20 partnership  
5 agreements in 2012 to 2013?

6 MR. DEWEY: Objection.

7 Q As many as a dozen in February of  
8 2012?

9 A I don't recall the specific numbers  
10 or the exact years, but I do generally recall  
11 that during the trading period, a good number  
12 of partnerships were requested to be formed.

13 Q Now, what was the business reason  
14 for all this activity in organizing these  
15 partnerships in that 2012-2013 period?

16 A I understood from the client group  
17 that it had generally something to do with  
18 their ability to trade on the Solo platform,  
19 and that's what they indicated to me.

20 Q And in order to do that, did you  
21 draft partnership agreements that could be  
22 used for plans accessing that platform?

23 MR. DEWEY: Objection.

24 A To the best of my recollection, we  
25 did assist in the drafting of related

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1 A I do.

2 Q Now, was that generally the  
3 approach to come up with a partnership  
4 agreement that would work for all of the  
5 partnerships?

6 MR. DEWEY: Objection.

7 A I believe and it's my general  
8 recollection that, yes, we created a form of  
9 partnership agreement with the general  
10 intention that it would be used for each of  
11 the pension plans.

12 Q Then, if we turn to the next page,  
13 at the top, you'll see an e-mail from Adam  
14 LaRosa to you dated December 5, 2012.

15 A December 5?

16 Q Yeah. It's at the top of the page  
17 ending --

18 A Oh, here it is. It's the next  
19 page.

20 Q -- 880?

21 A Yes, yes. I have it.

22 Q So the third sentence of  
23 Mr. LaRosa's e-mail says, "We wanted each to  
24 have perhaps only 5 percent interest, except  
25 for Raubritter LLC Pension Plan, which should

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1 have 10 percent."

2 Do you see that?

3 A I do.

4 Q And did you understand that with  
5 respect to the friends and families plans,  
6 the general rule was that the plan would have  
7 a 5 percent interest in the partnership, and  
8 95 percent would be with the other partners?

9 MR. DEWEY: Objection.

10 A So just to make sure I understand  
11 you, can you explain what you mean by "the  
12 friends and family plans?"

13 Q Did you understand that  
14 Mr. Markowitz and Mr. Van Merkenstein and  
15 Mr. Klugman brought in friends or family  
16 members to sponsor plans and to participate  
17 in the Solo trading?

18 A That was my general understanding,  
19 yes.

20 Q And did you understand, with  
21 respect to those plans, they would be  
22 5 percent partners in partnerships with your  
23 former clients?

24 A I don't recall the specific  
25 allocation to those plans as opposed to other

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1 plans called the client plans one way or the  
2 other.

3 Q Do you recall the 5 percent -- the  
4 issue of 5 percent, whether plans could have  
5 a 5 percent interest in a partnership?

6 A I do generally recall that as being  
7 a U.S. pension law issue, yes.

8 Q Mr. LaRosa says, a little further  
9 down in the e-mail, "I believe there was some  
10 tension around whether a 5 percent interest  
11 was enough to get us comfortable."

12 Do you understand what that refers  
13 to?

14 A I believe I do.

15 Q And what was that?

16 A To the best of my recollection,  
17 there's the question -- there was a question,  
18 a U.S. tax pension law question, surrounding  
19 whether, if a plan was a partner in a  
20 partnership, what percentage of the  
21 partnership profits needed to flow to the  
22 plan in order for the plan to be the  
23 beneficial owner of the -- of the income that  
24 came to the partnership.

25 Q How was that question addressed?

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1 A I believe Arthur Woodard and  
2 Kathleen Wechter spent some time considering  
3 that issue.

4 Q And what was their conclusion?

5 A To the best of my recollection, I  
6 believe they concluded that a 5 percent  
7 interest -- I'm sorry. I can't recall,  
8 actually, what they concluded.

9 Yeah, I don't -- I don't remember.

10 Q Do you recall any conclusion on the  
11 subject of beneficial ownership by either  
12 Mr. Woodard or Ms. Wechter?

13 MR. DEWEY: Objection.

14 A Yes. I generally recall that there  
15 was, you know, discussion about the U.S.  
16 pension law concept of beneficial ownership,  
17 and that Mr. Woodard advised the clients as  
18 to what he believed an appropriate percentage  
19 would be for the pensions' ownership in the  
20 partnership.

21 I just can't recall what percentage  
22 that was.

23 Q Do you recall Kaye Scholer  
24 concluding that the partnerships were the  
25 beneficial owners of the securities for U.S.

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1 tax and regulatory purposes?

2 MR. DEWEY: Objection.

3 A I don't recall that being the  
4 conclusion. I seem to recall that the  
5 conclusion was that the pension plans were  
6 the beneficial owners under U.S. pension law  
7 rules and related tax rules.

8 But I can't say definitively.

9 Q And who are the people who reached  
10 that conclusion on beneficial ownership?

11 A That conclusion would have been  
12 Arthur Woodard and Kathleen Wechter.

13 Q Anyone else?

14 A None that I can remember right now.

15 Q Mr. LaRosa's e-mail notes that  
16 Raubritter was issued 10 percent.

17 Why was Raubritter different?

18 A I don't know.

19 Q Sir, if you could turn to Exhibit  
20 3107?

21 A Yes, I have it here.

22 Q If you turn to the second page of  
23 the document, sir, Bates number at the bottom  
24 right is 727, if you see an e-mail from Peter  
25 Wells, dated January 11, 2013, on which

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1 Kathleen Wechter, I can't remember which, to  
2 the effect that the partnerships, in order to  
3 properly sponsor plans under U.S. pension  
4 rules, needed to have some permanency, and  
5 not be created and then dissolved in quick  
6 succession.

7 And so it was his advice that  
8 although the trading may have ceased, they  
9 should continue to operate the partnerships  
10 and conduct business within the partnerships  
11 for purposes of continuing to be compliant  
12 with the pension plan rules.

13 Q And so you advised that your client  
14 group should not terminate the partnerships,  
15 even if there's no current business activity?

16 MR. DEWEY: Objection.

17 A That's what the e-mail says, yes.

18 Yes.

19 Q And you noted that "among the many  
20 issues that have been addressed is that the  
21 plans must have been informed with the  
22 intention of embarking on a permanent or  
23 long-term business enterprise."

24 What did that mean?

25 MR. DEWEY: Objection.

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1 know, I just don't remember how the division  
2 worked.

3 Q Did you have an understanding at  
4 the time?

5 A I don't recall what my  
6 understanding was at the time one way or the  
7 other.

8 Q Do you recall that the reclaim was  
9 for the full amount of withholding tax that  
10 had been withheld on Danish dividends?

11 MR. DEWEY: Objection.

12 A That was my general understanding.

13 Q And did you understand that the  
14 Danish tax was 27 percent of the dividend?

15 A I can't recall now what my  
16 understanding was then as to tax rate.

17 Q In any event, if an application was  
18 successful and a plan got a full refund of  
19 the withholding tax, then that would be paid  
20 to the payment agent, which would pay the  
21 money over to the plan.

22 Right?

23 A That's my general understanding,  
24 yes.

25 Q And that refunded portion of the

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1 Danish dividend would then be subject to  
2 apportionment among the parties in accordance  
3 with their agreement to split the profits  
4 two-thirds, one-third, Solo and the plan?

5 MR. DEWEY: Objection.

6 A My understanding as to the best I  
7 can recollect right now was that the refund  
8 amount was part of the gross proceeds from  
9 which expenses were deducted. And then,  
10 again, and as I mentioned before, I don't  
11 remember exactly how they came to their  
12 ultimate division of two-thirds, one-third.

13 Q But without getting into the ins  
14 and outs, you understood that, overall,  
15 two-thirds of the profits were going to Solo  
16 and one-third was going to the plan?

17 A That was my general understanding.

18 Q That's fine.

19 MR. MAGUIRE: Why don't we take a  
20 break? How long -- let's go off the  
21 record.

22 THE VIDEOGRAPHER: Stand by. The  
23 time is 12:49 p.m. New York time and  
24 we're going off the record.

25 (Lunch recess taken.)

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1                   How can I help you?

2                   Q     Sir, if we look at that Paragraph 3  
3     at the top of the second page, it says, "We  
4     will look further at the issue discussed at  
5     the outset of the meeting as to how the  
6     funding of the transaction anticipated to be  
7     a loan impacts the pension plan's  
8     representation on the forms that it is the  
9     beneficial owner of the tax reclaim amounts."

10                  Do you see that?

11                  A     I do.

12                  Q     Okay. Did you understand that in  
13     making a reclaim, the pension plan would  
14     represent on the application form seeking the  
15     reclaim that it is the beneficial owner of  
16     the tax reclaim amount?

17                  A     I have that general recollection,  
18     yes.

19                  Q     And can you tell us how -- just  
20     explain this issue? How did the funding of  
21     the transaction impact that representation?

22                  A     I don't have a recollection of this  
23     specific e-mail exchange nor the, you know,  
24     specific issue that's alluded to here.

25                  All this seems to say to me is

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1 I don't have any more than my  
2 general recollection at this time.

3 Q Did you see any problem with the  
4 plans making a representation to Denmark that  
5 they were the beneficial owners of shares  
6 when they were legally obligated to pay  
7 two-thirds of the reclaims to Solo?

8 MR. DEWEY: Objection.

9 A As I mentioned earlier, in  
10 discussions with Jerome Lhote, he indicated  
11 that he had taken advice from Danish counsel  
12 and reported back to us, to me, that it was  
13 appropriate to treat the pensions as the  
14 beneficial owner for Danish law purposes.

15 Q You understand that this Exhibit  
16 4500 is a Danish law opinion?

17 A I do understand that, yes.

18 Q Given by a Danish law firm?

19 A Yes, I understand that.

20 Q And you understand that in this  
21 opinion on Page 5, that Danish firm is saying  
22 that a United States pension fund should be  
23 regarded as the beneficial owner of the  
24 Danish dividend if it is not legally  
25 obligated to pay any portion of the dividend

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1 to any person?

2 MR. DEWEY: Objection.

3 A I understand that those words are  
4 on the page. I don't have an interpretation  
5 of those words beyond the conversations that  
6 I had with Jerome Lhote, who, as I've  
7 mentioned before, is himself an attorney, and  
8 who represented to me that he coordinated the  
9 advice with Danish counsel.

10 Q Did Mr. Lhote tell you how Danish  
11 counsel could conclude that the pension fund  
12 was the beneficial owner, even if it was  
13 legally obligated to pay a portion of the  
14 Danish dividend to someone else?

15 A As I mentioned earlier, I don't  
16 recall the specifics of the conversation that  
17 I had with Jerome Lhote. I remember that we  
18 generally had conversations on this topic.

19 I'll stop there. Nothing further.

20 No further answer.

21 Q Is it your understanding that  
22 Mr. Lhote obtained a different opinion from  
23 some different Danish lawyer?

24 A Well, if I -- I'm not sure if I  
25 understand your question correctly. Your

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1           A    I think, as you know, I am not a  
2    Danish lawyer, so I can't speak to sources in  
3    Danish law. I can say only that, at the  
4    time, we spoke to -- I spoke with Jerome  
5    Lhote who was, of course, an attorney  
6    himself, a civil law attorney at that, who  
7    represented to me that he had confirmed with  
8    Danish counsel that the plans at the time  
9    could make such a representation.

10           Today, you know, again, that would  
11    be a point of Danish law that's beyond my  
12    knowledge or expertise.

13           Q    So are you then telling us you're  
14    not aware of any source of law that says that  
15    an agent or nominee can be a beneficial  
16    owner?

17           MR. DEWEY: Asked and answered.

18           You can answer the question a third  
19    time.

20           A    Again, today, I'm not a -- I'm not  
21    a Danish lawyer and I'm not familiar with  
22    Danish law today. And at the time, we  
23    relied -- I relied on and -- I relied on the  
24    representations in this regard made to me by  
25    Jerome Lhote.

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1 enough information to understand what this  
2 means. This is lender's warranties.

3 I don't understand in the document  
4 who the lender is. I don't know what the  
5 words "full and legal and beneficial  
6 ownership" mean in the context of this  
7 document or its governing law, and in order  
8 to do so, I would have to, again, read the  
9 document from cover to cover, probably do  
10 some research.

11 So I can't respond better.

12 Q With respect to your conversation  
13 with Mr. Lhote that he had gotten advice from  
14 Denmark about beneficial ownership, when did  
15 you have that conversation with Mr. Lhote?

16 A I don't recall an exact date, but  
17 it was certainly before -- as best as I can  
18 remember, it was certainly before any reclaim  
19 applications were submitted to the reclaim  
20 agencies.

21 Q And how do you know that?

22 A Because I generally recall that the  
23 onboarding documentation submitted to the  
24 reclaim agencies asked that question. And it  
25 was that -- the review of those documents, as

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1 Lhote, and in part, Matthew Stein.

2 Q Sir, can you turn to Exhibit 4503?

3 MR. MAGUIRE: Mark 4503.

4 (Whereupon the above mentioned was  
5 marked for Identification.)

6 A Yes, I have it here.

7 Q Do you recognize your signature on  
8 this document?

9 A (Witness reviewing.)

10 This is not my signature on this  
11 document.

12 Q Whose signature is this?

13 A The only person who was authorized  
14 to sign my signature on these documents was  
15 Peter Wells.

16 Q So do you recognize this was Peter  
17 Wells writing in your signature?

18 A I don't recognize Peter Wells'  
19 handwriting after all these years. As I  
20 mentioned, the only person authorized to sign  
21 these documents on my behalf was Peter Wells.

22 Q So do you have any reason today to  
23 suppose that the signature here is anything  
24 other than Peter Wells writing in per your  
25 authority and signing for you?

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1 A No, I do not have any reason to  
2 believe that it's anyone other than Peter  
3 Wells.

4 Q If we turn to the first page of the  
5 document, sir?

6 A Yes.

7 Q This is a Denmark beneficial owner  
8 declaration form.

9 Is that correct?

10 A It is.

11 Q And near the top of this page, does  
12 this form identify the beneficial owner as  
13 the Omineca Pension Plan?

14 A It does.

15 Q And below that, are there general  
16 declarations that start, "I hereby declare  
17 that?"

18 A I see that language, yes.

19 Q And Item C is, "I am entitled to  
20 the receipt of the dividend income shown on  
21 the books and records of the institution  
22 through which the related securities are  
23 held."

24 Do you see that?

25 A I do.

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1 Q This is a "Statement of Beneficial  
2 Ownership and Beneficial Ownership  
3 Questionnaire."

4 Is that correct?

5 A That is the title of the document.

6 Q And is that your signature on the  
7 document, on the page ending Bates 1839?

8 A That is not my signature on the  
9 document.

10 Q Is that a signature that you  
11 believe Peter Wells put on the document?

12 A I believe that would be Peter  
13 Wells' signature.

14 Q And that would be pursuant to your  
15 authority?

16 A Yes, Peter Wells had my authority  
17 to sign these documents.

18 Q So what generally did you tell --  
19 how did you give Peter Wells that authority?

20 A As you will recall, there were a  
21 number of plans and a fair number of  
22 documents. And given my own schedule and  
23 other obligations and travel, I couldn't  
24 always be in the office to sign documents.

25 So I reviewed a number of the

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1 here is our stab at 30 names for the LLCs. "

2 Do you see that?

3 A I do.

4 Q Did you participate with Mr. Wells  
5 in coming up with any of these names?

6 A I did not.

7 Q For all of the plans that were set  
8 up by these 30 LLCs, did they all use  
9 Kaye Scholer's mailing address?

10 A I don't recall if all of them did.

11 I do generally recall a good number of them  
12 did.

13 Q And how did you handle the mail  
14 that came in to these plans?

15 A There was no special -- to the best  
16 of my recollection, there was no special  
17 arrangement for handling the mail. The mail  
18 went to the mailroom and then it was directed  
19 to the attorney or administrator who handled  
20 the matter.

21 Q And who was that attorney or  
22 administrator?

23 A Peter Wells and Amy Gregory, who  
24 was one of the legal assistants who was  
25 working on the file at the time.

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1 you're submitting to Denmark are okay. "

2 Q Do you recall, in substance,  
3 communicating that view to your client group?

4 MR. DEWEY: Objection.

5 A I generally recall, in substance,  
6 communicating the view to the client group  
7 that the firm was comfortable. From a U.S.  
8 tax pension regulatory perspective, the plans  
9 were -- were the beneficial owners of the  
10 Danish securities.

11 Q And outside of that U.S. tax and  
12 regulatory boundary, with respect to the  
13 representations that were made to the Danish  
14 government, with respect to those  
15 representations, did you ever tell your  
16 former clients that you or your firm were  
17 okay, or words to that effect, with making  
18 those declarations to Denmark?

19 MR. DEWEY: Objection.

20 A As I think I might have mentioned  
21 in the past, we -- neither me nor my firm  
22 gave advice on non-U.S. law except to the  
23 limited extent that we had some of our  
24 German -- of our colleagues in our German  
25 office provide some advice on German law

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1 Mr. Markowitz meant when he said that the  
2 accounts will be held by the plan "as agent  
3 or nominee for partnership?"

4 A I don't recall this specific e-mail  
5 exchange or any surrounding conversations,  
6 and you would need to ask Mr. Markowitz what  
7 he meant by that phrase.

8 Q As you've testified today, sir, is  
9 it your testimony that you do not have an  
10 understanding of what Mr. Markowitz was  
11 referring to here as the plan acting "as  
12 agent or nominee for the partnership?"

13 MR. DEWEY: Objection, asked and  
14 answered.

15 A I'm saying that I do not recall  
16 this e-mail exchange or the surrounding --  
17 any surrounding conversation, if any. And I  
18 can't say what I thought at the time of the  
19 e-mail, and you would need to ask  
20 Mr. Markowitz what he meant by that phrase.

21 Q Did you or your firm file FBARs for  
22 the partnerships as well as the plans that  
23 engaged in Danish trading?

24 A I don't recall specific entities  
25 that we filed FBARs for, but I do recall

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1 generally that we assisted the clients in  
2 preparing any necessary FBAR filings.

3 Q And is it your understanding that  
4 the partnerships filed FBAR filings because  
5 the plans held their trading accounts as  
6 agents or nominees for the partnerships?

7 MR. DEWEY: Objection.

8 A I don't recall the specific  
9 entities that filed or did not file FBARs,  
10 but it would make sense to me that the  
11 partners, the partnerships filed FBARs  
12 because mere signature authority over an  
13 account outside the United States can trigger  
14 an FBAR filing. In the context of the FBAR  
15 rules, it's referred to as an economic  
16 interest, very similar to beneficial  
17 ownership, for FBAR filings.

18 Q So we discussed a little earlier  
19 some individuals; Mr. Altbach, Mr. Lerner,  
20 Mr. Zelman, Mr. Miller.

21 Do you recall that?

22 A I recall those names, yes.

23 Q Did you provide or your firm  
24 provide any legal advice to any of those  
25 individuals?

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1                   And I don't recall now what their  
2                   relationship was to Solo or what services  
3                   they were providing in the context of the  
4                   overall transaction.

5                   Q     When the custody services were  
6                   spread among these four custodians, the  
7                   parties who were no longer using Old Park  
8                   Lane had to enter into a new custody  
9                   agreement.

10                  Do you recall that?

11                  MR. DEWEY: Objection.

12                  A     I can't recall now any of the names  
13                  that you mentioned other than Telesto nor do  
14                  I recall one way or the other what their  
15                  activities were and roles were in relation to  
16                  the overall transaction.

17                  Q     Did you ever review the new custody  
18                  agreement for these custodians?

19                  A     I don't recall one way or the other  
20                  whether I looked at those custody agreements  
21                  or not.

22                  Q     Let me ask you to turn to Exhibit  
23                  1780?

24                  A     Yes, I have it.

25                  Q     You're not on this e-mail, sir, but

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1 sophisticated generally in tax and tax  
2 planning matters.

3 And we have clients such as these  
4 who are extraordinarily sophisticated and  
5 well-versed, you know, and who themselves  
6 know as much or more than I do in many  
7 respects.

8 So it's all over the map.

9 Q Sir, if you could turn to Exhibit  
10 3111?

11 A Yes, I have that.

12 Q Is this an e-mail that  
13 Mr. Markowitz sent to you on or about  
14 September 4 of 2013?

15 A The first e-mail is. I just want  
16 to read the chain.

17 (Witness reviewing.)

18 Yes. How can I help you?

19 Q Mr. Markowitz is responding to an  
20 e-mail that you sent him on the same day in  
21 which you say, "As I mentioned to Adam," and  
22 after the parenthetical, it goes on to say,  
23 "and while we still think the transactions  
24 work, we don't think we can issue an opinion  
25 that would be of real value."

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1                   Do you see that?

2                   A    I do.

3                   Q    Now, what did you mean by that?

4                   A    While I don't recall this specific  
5    e-mail exchange, I do generally recall  
6    clients' requests that the firm consider  
7    issuing a formal tax opinion related to the  
8    tax -- the U.S. tax aspects of the  
9    transaction.

10                  Q    When you say "the U.S. tax  
11   aspects," what tax aspects did they want the  
12   opinion to address?

13                  A    I generally recall and believe that  
14   they were looking for a list of questions to  
15   be answered. And I can't remember the  
16   specifics now, but I believe that some -- not  
17   all, but some -- were addressed in -- excuse  
18   me -- in the memo that we ultimately produced  
19   for them.

20                  Q    Is that the memo that we looked at  
21   earlier dealing with disqualified persons and  
22   prohibited transactions?

23                  A    I believe so.

24                  Q    You say here, "We wanted to have a  
25   call to explain our thinking."

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1 Is that right?

2 A Yes.

3 Q As of March 31 of 2015?

4 A That's the date on the form.

5 Q If we turn to the page with the  
6 Bates at the bottom 930?

7 A I have it.

8 Q There's a column on the right for  
9 "Purchases and Sales of Foreign Securities?"

10 A Yes, I see that column.

11 Q And under that, for "Foreign  
12 Equities?"

13 A Yes, I see that.

14 Q And under that, for "Sales?"

15 A Yes.

16 Q And for the United Kingdom, the  
17 plan discloses sales of \$596 million.

18 Is that correct?

19 A Yes.

20 Q Then, if we go to the page with the  
21 Bates at the bottom 937, it records a grand  
22 total in terms of sales of foreign equities  
23 of \$596 million?

24 A Yes, I see that.

25 Q What was the threshold for filing a

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1 Form S?

2 A I do not now recall the specific  
3 trading volume or value thresholds for the  
4 various Federal Reserve forms, of which this  
5 is one.

6 Q Sir, if you could turn to Exhibit  
7 2224?

8 A Okay. I have it.

9 Q Is this an e-mail from  
10 Mr. Markowitz on which you were copied from  
11 April 9 of 2015?

12 A It is.

13 Q Mr. Markowitz says in the e-mail,  
14 "Peter, here are the securities bought or  
15 sold by the 40 pension plans as of March 31,  
16 2015 for Form S." He goes on to say, "As you  
17 can see in the report, all exceeded  
18 \$350 million."

19 Do you see that?

20 A I do.

21 Q And if you turn to the next page,  
22 you see the list of the 40 plans?

23 A Yes.

24 Q And all of the amounts exceed --  
25 actually, all of the amounts exceed

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1       \$500 million.

2                   Do you see that?

3       A    I do.

4       Q    So for these 40 plans, the total  
5       value of securities here is in excess of  
6       \$20 billion?

7       A    I can't do the math that fast. I'm  
8       not going to attempt to tally this now.

9       Q    It's a lot of money.

10               MR. DEWEY: Objection.

11       Q    Did you have an understanding as to  
12       how these 40 plans were able to buy -- each  
13       of them -- hundreds of millions of dollars of  
14       Danish securities?

15       A    I understood generally that the  
16       plans borrowed the money, financed the money,  
17       to make the purchases.

18       Q    Did you understand that these were  
19       all new plans?

20               MR. DEWEY: Objection.

21       A    Well, I haven't -- I haven't  
22       memorized the names of all the plans that  
23       were created. I don't know which on these  
24       lists were new and which were not.

25       Q    Did you not understand that the

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1 the client group had with their various  
2 financial institutions.

3 Q Did you ever ask anyone to explain  
4 how a new plan with no more contributions  
5 than the maximum permitted contribution of  
6 \$23,000 could afford to buy over \$500 million  
7 of Danish securities?

8 MR. DEWEY: Objection.

9 A I vaguely understood that they  
10 could afford to buy the securities that were  
11 traded because financial institutions agreed  
12 to lend them or otherwise finance the money.

13 Q And in this case, the financial  
14 institution that was providing the money was  
15 Solo or a party related to Solo.

16 Is that right?

17 MR. DEWEY: Objection.

18 A I don't have a recollection what  
19 financial institution actually provided the  
20 money as opposed to facilitated, you know,  
21 obtaining the money. Again, neither I nor,  
22 to the best of my knowledge, anyone in my  
23 firm were involved in anything but providing  
24 the legal -- the U.S. legal advice related to  
25 tax, pensions, and some regulatory matters.

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1 or not.

2 Q Do you recall the firm ever  
3 advising you that representing Mr. Rivera  
4 would cause an unwaivable business conflict?

5 A I don't recall Mr. Rivera nor his  
6 name, nor what inquiries he made of me or my  
7 firm, one way or the other, if he made any,  
8 or whether or not the firm indicated that  
9 representing Mr. Rivera would be a business  
10 conflict.

11 Q Sir, if you could turn to Exhibit  
12 3112.

13 A I have that e-mail here.  
14 I will read it. Give me a moment,  
15 please.

16 (Witness reviewing.)

17 I have briefly read through the  
18 exhibit.

19 What is your question, please?

20 Q Is this an e-mail on which you were  
21 copied from Mr. Van Merkensteijn on or about  
22 July 8, 2014?

23 A Yes. The first page of the exhibit  
24 references such an e-mail.

25 Q And at the bottom of the first

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1 page, there's an e-mail from Mr. Wells to  
2 Mr. Van Merkensteijn. Right?

3 A When you say "the first page" --  
4 oh, I see -- yes, I see that, July 18, 2014  
5 at 8:50 a.m.

6 Q I think it's July 8?

7 A I'm sorry. Yes, July 8, 2014.

8 Q Mr. Wells says, "John, after  
9 further internal discussion and considering  
10 the issues at play, further we confirm that  
11 we do not recommend the co-trustee route  
12 given the risk of a potential prohibited  
13 transaction, notwithstanding Rich's  
14 additional comments."

15 Do you see that?

16 A I see those words, yes.

17 Q And Mr. Wells says that "Between  
18 the two suggested alternatives, the  
19 authorized trader approach is preferred."

20 Now, how was this issue resolved?

21 A I don't have a recollection of this  
22 e-mail exchange nor conversations surrounding  
23 this e-mail exchange nor what the specific  
24 issues were.

25 I simply note that, as you go

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1 through the exhibit, the appropriate subject  
2 matter experts, Kathleen Wechter is  
3 referenced here with respect to issues  
4 touching on the pension plans, and I believe  
5 I saw a reference here as well to Steve  
6 Calahane on regulatory matters, yes.

7 So I -- I can't recall other than  
8 to say that the appropriate attorneys with  
9 expertise were consulted.

10 Q Now, if you turn to the second  
11 page, there's a reference, I believe you  
12 mentioned, to a Mr. Calahane, and  
13 specifically that's in the last paragraph on  
14 the page, the paragraph that starts with  
15 "Respect to the professional investor issue."

16 A I'm sorry. When you -- what is the  
17 Bates number on your page?

18 Q Bates number 923.

19 A Yes, I have that.

20 Q And the second sentence says,  
21 "Steven favors the co-trustee approach and  
22 did not believe that it would implicate any  
23 of the investment advisor issues.  
24 Conversely, he raised concern with having  
25 John or Rich appointed as authorized trader

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1 or agent with investment discretion."

2 Do you see that?

3 A I do.

4 Q How was Mr. Calahane's concern  
5 about the "authorized traitor or agent"  
6 resolved?

7 A As I think I mentioned, I don't  
8 have a recollection of this e-mail exchange  
9 nor the issues that were raised in the e-mail  
10 nor any related surrounding conversations,  
11 and I don't recall how those issues were  
12 resolved other than to say that they were  
13 referred to the appropriate attorneys.

14 Q You had mentioned the Duet  
15 transaction or Duet people yesterday.

16 Do you recall that?

17 A I recall that we made mention of an  
18 organization called Duet.

19 Q And do you recall in the  
20 transactions that the Duet organization  
21 supported how much your former clients would  
22 have had to put down to participate in the  
23 transaction?

24 MR. DEWEY: Objection.

25 A I don't recall the specifics of the